IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

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:: **O R D E R** ::

State of Rajasthan & Anr.

Vs.

Deep Shiksha Vikas Samiti, Udaipur & Anr.

S.B. CIVIL WRIT PETITION NO.61/2002

Date of Order :: 7th July, 2006

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Rameshwar Dave, Dy.G.A. for the petitioner.
Mr. D.D. Thanvi, for the respondent.

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BY THE COURT:

This writ petition has been submitted against the order dated 08.12.2000 passed by the Board of Revenue for Rajasthan, Ajmer in Appeal No.96/1999 whereby the Board has partly allowed the appeal submitted by the respondent No.1 Deep Shiksha Vikas Samiti, Udaipur ('the respondent Samiti' herein) against the order dated 24.08.1999 passed by the Revenue Appellate Authority, Udaipur; and has modified the order dated 11.01.1999 issued by the Collector, Udaipur

for allotment of 4 bighas of land to the respondent Samiti for the purpose of school building of Deep Jyoti Secondary School, in so far it relates to charging of the price of land at the rate of Rs.4 lacs per bigha; and has ordered charging of the price at a rate of Rs.3 lacs per bigha only.

Factual aspect of the matter and the surrounding circumstances could be noticed in brief thus: The respondent Samiti made an application for allotment of 9 bighas and 10 biswas of land comprised in Araji No.414 at Savina Kheda, Udaipur in the year 1986. It appears from the notes-sheet of the concerned case file as produced on record by the petitioners that the Senior Town Planner was not agreeable for such allotment and in the meantime, the land in question along with other parcels of land was transferred to the Urban Improvement Trust, Udaipur ('UIT' for short). It appears that the respondent Samiti took the request for allotment to the State Government and the Revenue Department sought comments from the UIT and the Senior Town Planner. The Senior Town Planner made a comment that the proposed land was excessive and 4 bighas of land may be allotted; however, the UIT was of opinion that application for such allotment ought to be made to it. The proceedings continued between the Revenue Authorities and the UIT for treatment of the land in question and essentially the dispute was created because of

the land having been mutated in favour of the UIT despite stay order of the State Government. It was pointed out on 11.03.1996 (at N/200) that the government land comprised in urban areas was ordered to be transferred to the UIT and accordingly common orders were issued that included the land applied for by the Samiti also. Be that as it may, it appears that ultimately the Government proceeded to issue an order on 17.04.1997 that 4 bighas of land in Araji No.414 be allotted to the respondent Samiti at 75% of the index price and to that extent, allotment to the UIT be cancelled.

Upon such directions, further proceedings were adopted and in that sequence, as mentioned at N/230, the report obtained from the Tehsildar stated, inter alia, that old Araji No. 414 was now comprised in Araji No. 359 measuring 6.3300 hectares; that the building of Deep Jyoti Secondary School was in Araji No. 670; that the land was recorded in the name of UIT; and that the school has taken in its possession about 10 bighas of land of Araji No. 359 and has constructed a room thereat. On 23.10.1997, the Additional Collector (Administration); General Manager, District Industries Centre; Senior Manager, RIICO; Deputy Town Planner, UIT; Tehsildar Girva; and Junior Engineer, Rajasthan State Pollution Control Board inspected the site. The land in question was found comprised in Araji No.359 (old No.414) and it was observed

that the land was uneven having mines and pits; and was away from the main road; and that there was no objection in allotment of the land after obtaining current rates from the Sub-Registrar. The respondent Samiti for questioning the price sought to be charged has relied upon these proceedings dated 23.10.1997. The proceedings recorded at N/236 read as under:-

> "आज दिनांक 23.10.97 को हमराह अति० जिला कलक्टर (प्रशा०), संयुक्त निदेशक जि०उ०केन्द्र, वरिष्ठ प्रबन्धक रिको, उप नगर नियोजक (न०वि०प्रन्यास) तहसीलदार गिर्वा तथा कनिष्ठ अभियन्ता राज० राज्य प्रदूषण मंडल के स्थल निरीक्षण किया गया। नगर विकास प्रन्यास के प्लान में आ०नं० 359 में 4 चार बीघा भूमि को दर्शाया गया है। मौके पर भूमि में खड्डे होकर गहरी खाने हैं तथा ऊबड खाबड है मुख्य सड़क से दूर है। उप पंजीयक से वर्तमान दर प्राप्त की जाकर उक्त भूमि नगर विकास प्रन्यास के खाते से 4 बीघा कम (निरस्त) करते हुए आबंटन किये जाने में किसी को आपत्ति नहीं है । राज्य सरकार की स्वीकृति दिनांक 17.4.97 के क्रम में वर्तमान भूमि विक्रय दर प्राप्त की जाकर आबंटन आदेश जारी किये जावे । सचिव, दीप शिक्षा विकास समिति को तहसीलदार गिर्वा एवं नगर विकास प्रन्यास की मौजूदगी में कब्जा सिपुर्द किया जावे।"

It appears that with reference to the aforesaid note and the rates obtained from the Sub-Registrar, a proposal was made by the Incharge of Revenue Section on 28.10.1997 that in view of the situation at site, lowest rate of Rs.40,000/- per bigha may be charged. However, the learned Collector did not approve such proposal and observed that the land was

adjacent to a developed colony of UIT and the rate must be assessed properly. The Collector stated at N/239:

> "The plot is adjacent to the developed colony of the UIT, therefore, rate must be assessed properly."

It further appears that the Sub-Registrar, Udaipur was requested to state proper rates to be charged who opined for charging of rate at Rs.3 lacs per bigha by his letter No. 383/98 dated 12.08.1998 (at C/186). The learned Collector did not approve even these rates and formed a Committee comprising of the Sub Divisional Officer, Girva; Officer on Special Duty, UIT; and the Sub-Registrar, Udaipur to specifically propose the rate to be levied towards cost of the land. The said Committee after examining the site and the record made the proposal on 29.12.1998 that price be charged at Rs.4 lacs per bigha. The Committee found that the land was situated near abadi but as the allotment was required to be made in pursuance of the order dated 17.04.1997 and price was to be charged on the basis of index price for agricultural land, it was proper to charge Rs.4 lacs per bigha being the index price for unirrigated land near abadi for the area in question. The Committee, inter alia, observed (at N/252):

> "दौराने मौका निरीक्षण (29-12-98)यह पाया गया कि आस-पास के क्षेत्र में मकान आदि बने हुए है व हिरन मगरी सेक्टर-14 की आबादी से लगती हुई भूमि है। परन्तु राजस्व विभाग के पत्र दि. 17-4-97 के अनुसरण

> में आवंटन किया जाना है तथा उसमें कृषि भूमि इन्डेक्स की दर पर भूमि की कीमत वसूल करने की बात कही गई है। उप-पंजियक द्वारा बताया गया कि पूर्व में दि. 14-8-98 को भेजी गई राय भूमि की मौके की स्थिति के आधार पर ही है ।
>
> उपरोक्त परिपेक्ष्य में चूँकि राजस्व रिकॉर्ड अनुसार किस्म भूमि पड़त-तृतीय है, अत: ग्राम सवीना की असिंचित किन्तु आबादी/मुख्य सड़क के पास की दर यथा रू. 4 लाख प्रति बीघा लिया जाना प्रस्तावित है।"

The Collector, Udaipur thereafter made the order on 04.01.1999 (at N/253) that further action may be taken keeping in view the recommendation of the Committee and accordingly the order was issued on 11.01.1999 (Annex.1) allotting 4 bighas of land in Araji No.359 under the Rajasthan Land Revenue (Allotment of Unoccupied Government Agricultural Land for the Construction of Schools, Colleges, Dispensaries, Dharamshalas and Other Buildings of Public Utility) Rules, 1963 for construction of school building of Deep Jyoti Secondary School, inter alia, with the following condition:-

> "(1) भूमि की कीमत 4.00 लाख रूपये प्रति बीघा से 2 एकड़ तक भूमि की कीमत 75 प्रतिशत एवं इससे अधिक भूमि की कीमत शत-प्रतिशत वसूल होगी।

The respondent Samiti choose to challenge the rate levied in the aforesaid order dated 11.01.1999 before the Revenue Appellate Authority in Appeal No.20/1999. The learned Appellate Authority considered the record of the case

and with reference to the observations of the Committee dated 29.12.1998 and the rates given out by the Sub-Registrar, found that the rate was rightly charged by the Collector, Udaipur and order impugned called for no interference and, accordingly, rejected the appeal by the order dated 24.08.1999 (Annex.2).

The respondent Samiti agitated the matter in further appeal before the Board of Revenue for Rajasthan, Ajmer in Appeal No. L.R./96/99/Udaipur. The learned Member of Board referred to the record of the case and observed with reference to N/230 that the Committee constituted by the Collector having opined for the rate of Rs.3 lacs, there was no option with the Collector so as to levy the rate of Rs.4 lacs per bigha; and that the appreciation of price or development of abadi was inconsequential as the matter of allotment was pending since 1986. Learned Member further referred to the opinion of the second committee at N/252 and observed that when the said committee found the rate of Rs. 3 lacs per bigha as opined by the Sub-Registrar in his letter No. 383/98 to be appropriate; and when the Sub-Registrar had also stated this opinion then there was no basis available with the Collector to fix the price at Rs.4 lacs per bigha. The learned Member also referred to the contention of Secretary of the Samiti that the institution was imparting free education after taking donation from Jain

community and proceeded to make observations that this community alone could execute such great work for providing education and other facilities to the poor persons and hence the Collector ought to have accepted the opinion of the concerned authorities. The observations of the learned Member read thus:

> "एक अहम बिन्दु यह भी है कि सचिव इन्दौरीलाल जैन ने बताया कि जैन समाज के लोगों से चन्दा इकठ्ठा कर यह संस्थान चलाया जा रहा है, जिसमें छात्रों को निशुल्क शिक्षा दी जाती है। मैं भी यह मानता हूं कि केवल मात्र यही ऐसा समाज है जो गरीब लोगों को शिक्षा या अन्य संसाधन उपलब्ध कराने हेतु ऐसा महान कार्य निष्पादित कर सकता है तो जिलाधीश महोदय को चाहिए था कि वे उपपंजीयक,विशेषाधिकारी, नगर प्रन्यास एवं उपखण्ड अधिकारी की राय को मानते एवं इस संस्थान के बाबत भूमि आवंटन की कार्यवाही वर्ष 1986 से चल रही है तो उनके द्वारा 1989 में जो 3 लाख रूपए दर थी उसी अनुसार उनसे चार्ज करनी चाहिए थी।"

The learned Member of Board of Revenue, accordingly, accepted the appeal in part and directed charging of the price at Rs.3 lacs per bigha only by the impugned order dated 08.12.2000 (Annex.3).

The State of Rajasthan and the Tehsildar, Girva have assailed the legality and validity of the aforesaid order dated 08.12.2000 in this writ petition.

The contesting respondent No.1 has submitted in its reply that the writ petition was submitted against the order dated 08.12.2000 with an inordinate delay; that the petitioners

have concealed material facts; that the application for allotment was made way back in the year 1984 and despite stay order of the State Government, the land was transferred to the UIT and it was on account of sheer adamance of the then Collector, Udaipur that final allotment could be made only in the year 1999 that has resulted in hike in the index rates; and had the proceedings been carried out in accordance with law in time, the answering respondent would not have been saddled with such high rates. It has been suggested that the land has been allotted for the purpose of a school that imparts education to the children free of charge also. Supporting the order passed by learned Member of the Board, the answering respondent has pointed out that it was specifically reported on 23.10.1997 that the land was not plane and was having mines and pits and was away from the main road and, therefore, charging of rate of Rs.4 lacs per bigha was wholly illegal. It has also been maintained that the Sub-Registrar had also indicated the rate of Rs.3 lacs per bigha only and by no stretch of imagination, the rate of Rs.4 lacs could be charged. It has also been suggested in the reply that it were the duty of the State Government to impart education to the children and the answering respondent is imparting education and that out of 300 children, nearly 50 children are imparted education free of charge. The basic burden of submissions of answering

respondent is that because of the recommendations dated 23.10.1997, the Board of Revenue has rightly found that the price could be charged at Rs.3 lacs per bigha and not beyond.

It may be pointed out that certified copies of the notes-sheet and the letters received from the Sub-Registrar, Udaipur as referred hereinabove have been placed on record by the learned Deputy Govt. Advocate during the course of submissions and being directly relevant for the present purpose and being undisputed, have been taken on record and into consideration. It may also be pointed out that at the time of conclusion of the hearing in this matter, learned counsel for the respondent has also placed on record photostat of correspondence exchanged between the parties after passing of the order of the Board of Revenue, that has also been taken on record and shall be referred hereafter.

The learned Deputy Govt. Advocate Mr. Rameshwar Dave, with the submissions that the learned Member of Board has proceeded on irrelevant and extraneous considerations and has even proceeded to make such observations that have no foundation or basis, has assailed the impugned order dated 08.12.2000. It has been emphatically contended that the applicable rates as on the date of allotment have been charged in accordance with law having due regard to the situation at site and there has been no justification for

interference in this matter by the Board of Revenue. Learned counsel Mr. D.D. Thanvi, appearing for the contesting respondent has vehemently opposed the submissions of the petitioners and while relying on the report dated 23.10.1997 has pointed out that indisputably the land is uneven having pits and mines and is located away from the main road and in fact its rate ought to have been charged at Rs.40,000/- per bigha only as opined on 28.10.1997; yet, when the Board of Revenue has ordered for charging of Rs.3 lacs per bigha on the basis of the rates subsequently given out by the Sub-Registrar, the answering respondent has not challenged the same and there is no justification with the petitioners for claiming anything beyond Rs.3 lacs per bigha.

Having heard learned counsel for the parties and having perused the material placed on record, this Court is satisfied that the order passed by the learned Member of Board remains wholly perverse, discloses errors apparent on the face of record and results in manifest failure of justice and cannot be sustained.

The consideration adopted by the learned Member of Board has been indicated hereinbefore and a part of wholly unwarranted observations has also been reproduced supra. Having examined the order passed by the learned Member of Board, this Court is constrained to express dissatisfaction over

such a cryptic and inexplicable approach. It has been suggested that for mere recommendations made as noticed at N/230 to N/236, there was no option with the Collector so as to fix the price at Rs.4 lacs per bigha. The chronology of the facts makes it clear that though the Government proceeded to issue an order for making allotment of 4 bighas of land, the price was definitely left to be determined and the reports as made at N/230 to N/238, being obviously incomplete and incorrect have rightly been disagreed to by the learned Collector, who had the authority to do so. It has entirely been unjustified on the part of the learned Member to observe that there was option with the Collector but to accept those recommendations.

Entirely perverse approach of the learned member is evident on a bare look at the recommendations of the committee at N/252, as reproduced supra. It had specifically been recommended by the said committee that the price be charged at Rs. 4 lacs per bigha; but the learned member has observed that the said committee found the rate of Rs. 3 lacs per bigha as opined by the Sub-Registrar in his letter No. 383/98 to be appropriate! The impugned order stands at square contradiction with the record of the proceedings.

It is noteworthy that the price index as referred by the answering respondent Samiti itself (Annex.R/3) shows that as

on 03.05.1997, the District Level Committee had opined for the land located at Savina Kheda (A) around Sector No.13-14, Krishi Mandi, Subcity Centre and abadi in the manner that for unirrigated land near abadi/main road, it could be Rs.4 lacs per bigha; and for unirrigated land away from abadi/main road, it could be Rs.3 lacs per bigha. The report of the Committee dated 23.10.1997, of course states about the land being uneven and having deep mines and pits and being away from the main road, but only states the consent for allotment of the land in terms of Government Order dated 17.04.1997 after charging the current sale price. Such report could least be considered conclusive on the question of rate to be charged.

Though the respondent No.1 has heavily relied upon this report about the characteristic of the land but other facts as stated at N/230 were that the land was situated near abadi; and that the school building was situated at Araji No.670 but about 10 bighas of land of Araji No.359 was occupied by the school of the Samiti and a room was also constructed. Such possession on Araji No. 359 could only be of a conscious encroachment by the respondent Samiti.

The Incharge of the Revenue Section had gone to the extent of making a recommendation on 28.10.1997 that charging at Rs.40,000/- per bigha would be appropriate (at N/238); to which the learned Collector pointed out that the

land was adjacent to a developed colony of UIT and, therefore, rates must be assessed properly.

Having regard to the overall facts of the case and the reports as available on record, this Court is satisfied that the learned Collector has proceeded squarely in conformity with law and has rightly constituted the Committee of Sub Divisional Officer, Girva, Officer on Special Duty, UIT and Sub-Registrar, Udaipur. The said Committee has clearly found, as reproduced hereinbefore, that the land is adjacent to abadi and various houses are constructed in the neighbourhood and, accordingly, the price ought to be charged at Rs.4 lacs per bigha. The learned Collector has not committed any illegality or impropriety in accepting such recommendation.

Whether it were a report of the earlier Committee or the opinion of the Sub-Registrar in his letter No. 383/98 dated 12.08.1998, the learned Collector was not bound by such opinions and had every right to arrive at the correct price to be charged for the land in question. Merely making of an application for allotment of land did not invest the respondent Samiti with any indefeasible right for allotment or for price fixation at its whims and wishes. The Government has proceeded to pass an order for allotment of land only on 17.04.1997 and the proceedings have been taken up

thereafter squarely in conformity with law for correct assessment of the rates to be charged.

This writ petition was filed against the impugned order dated 08.12.2000 on 06.11.2001 and on the facts and in the circumstances of this case, it cannot be said to be suffering from delay or latches as suggested by the answering respondent. There has been no concealment by the petitioners of any fact as alleged by the answering respondent. On the contrary, the suggestion of imparting free education as made by the respondent Samiti is falsified by its own vague, cryptic and incomplete averments.

The learned Revenue Appellate Authority has rightly found that the order passed by the Collector dated 11.01.1999 called for no interference; however, the learned Member of Board has proceeded to interfere in the matter on absolutely irrelevant considerations. The impugned order cannot be countenanced and deserves to be quashed and this writ petition deserves to be allowed.

It may be pointed out that this writ petition was taken up for consideration and admitted on 15.01.2002 and by way of an interim order, this Court directed that “in case the respondent deposits the money as demanded by the petitioner, land may be allotted”. It appears from the record that the respondent Samiti has been served with the notice of

this writ petition only on 28.02.2003; and prior to that the respondent had regularly requested for accepting the deposits in accordance with the order passed by the Board of Revenue. The respondent Samiti was informed on 15.07.2002 by the Collector, Udaipur while endorsing a copy of the letter addressed to the Tehsildar, Girva that a writ petition was filed before this Court. The respondent again pointed out on 26.12.2002 that no notice of the writ petition was received and again an application was made on 28.01.2003 that the Samiti was willing to deposit the amount for allotment of the land as decided by the Board of Revenue. It appears that the Collector, Udaipur by his letter dated 11.02.2003 informed of the particulars of the present writ petition and directed the respondent Samiti to take proceedings before this Court. It appears that the respondent was never informed by the petitioners of the order dated 15.01.2002 passed by this Court nor was called upon to make deposit of the amount in terms thereof. The order dated 15.01.2002 was later on confirmed by this Court on 21.05.2003 and then, the application for early hearing moved by the respondent was allowed and accordingly this writ petition was heard. In this view of the matter, though the order passed by the learned Member of the Board is being set aside now, having regard to the overall facts and circumstances, it appears appropriate that the order

dated 11.01.1999 be put into effect within two months from the date of this order.

Subject to the aforesaid clarification and observations, this writ petition is allowed and the impugned order dated 08.12.2000 passed by the Board of Revenue for Rajasthan, Ajmer is quashed and set aside. The appeal filed by the respondent No. 1 before the Board of Revenue stands dismissed. Parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

Praveen